

HILL ADVISORY NEWS



Did Employer Violate Human Rights Code by Failing to Provide a Workplace Free of Sex Discrimination ??



- * Carrie worked in the casting area of a large aluminum manufacturing plant in British Columbia. The company had a 'Code of Conduct' which included human rights and harassment provisions. Every employee was provided with 8 hours of in-house training regarding this Code. There was also a Joint Human Rights committee made up of both management and union representatives. This committee would: investigate any complaints received relating to the 'Code of Conduct'; conduct an investigation; and report their findings to senior management. Employees were encouraged to resolve harassment concerns informally if possible and members of the Joint Human Rights committee would provide support in this regard.
- * Carrie found the workplace stressful and on the advice of her doctor had started to take anti-depressants. She was often the only woman on her shift and found the casting area very isolating, quite hot, uncomfortable and at times, dangerous. However, Carrie liked the area because it was much cleaner than other areas and the crew was smaller. Her shift was called the 'problem shift' but she got along with most of the men and she liked her supervisor, Arnie.
- * One day Carrie was sitting in the lunchroom with some co-workers. The company had recently changed the clothing worn by the union employees but Carrie was still wearing her old uniform. Brent, a union member, asked her why she had not changed to the new clothing. She told him she was allergic to wool and suffered from eczema. Brent rolled his eyes and replied that she was another 'problem woman' making a reference to another woman who also said she had eczema. Brent suggested that Carrie wear some clothes under her new wool uniform. Carrie felt that rather than being helpful Brent was being combative.
- * On another occasion Carrie was playing cards with Brent and several other co-workers when he kept referring to her as 'stupid' because of how she was playing. Carrie asked Brent if he was trying to hurt her feelings since he did not say the same thing to any of the male card players. Brent just laughed but eventually stopped.
- * A short time later, the company held their monthly safety meeting and Carrie was the only woman present. Arnie put up an overhead which stated "Gentlemen, please review."
- * Carrie smiled and said it should say "*Ladies and Gentlemen, please review.*" Neil, a co-worker, replied "You f - - - ing women kill me you want to be treated like a man and work here then when you get here you want to be treated like a woman." Arnie continued the presentation. Carrie was upset as she felt he should have dealt with Neil's 'inappropriate' remark immediately. A few days later as Carrie was outside having a cigarette with Arnie, Neil pulled up in his truck and yelled to Carrie that she was 'sucking up to her supervisor.'
- * A few weeks later Carrie and a male co-worker were waiting for a casting to cool when Gord, a co-worker, told them to get off their 'fat a - s' and do something. A month later Gord came up to Carrie who had just had a day off work and told her she must be having a 'thing' with Arnie because she was able to get the time off. Carrie was shocked and felt that he was implying she was having a sexual affair with Arnie. She told Gord that his remark was 'inappropriate' and amounted to 'sexual harassment.' Gord replied he did not 'give a f - - k what it was' and walked away. Carrie immediately spoke with Arnie about Gord's comment but he just laughed and told her to ignore him.
- * Several weeks later Carrie saw her doctor who changed her anti-depressant medication. After working for a few hours she developed a terrible headache. Before going on her break, Carrie noticed the docket time on the computer was wrong and changed it. When she returned she saw Gord holding some papers. He started yelling at her, shook the papers in her face and told her she should never have touched the computer.
- * Later that evening Carrie went to Arnie and told him that she had a bad headache and was going home. Arnie told her to go to first aid. Later that night she was hospitalized for having an adverse reaction to her new medication. Carrie was having trouble sleeping, had lost 30 pounds and felt like quitting. Her doctor put her on stress leave as Carrie thought that the incidents at work were responsible for her stress. She spoke to her union rep who set up a meeting with management so Carrie could explain her concerns about the work environment and would be able to return to her job.
- * After meeting periodically with management for the next 18 months, Carrie felt nothing had been resolved and finally filed an informal complaint with the Joint Human Rights committee.

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- * An informal investigation was subsequently conducted and Carrie was told her co-workers had been spoken to and informed that their behaviour would not be tolerated however, there would be no further discipline imposed. Carrie was unhappy with the result and subsequently filed a formal complaint. When the results of the formal investigation was the same as the previous one she filed a complaint with the B.C. Human Rights Tribunal against the company, (3) co-workers and management. She alleged that she had been *'discriminated against in her employment on the basis of her sex, contrary to the B.C. Human Rights Code.'*
- * The B.C. Human Rights Tribunal stated that Carrie had to establish that she was subjected to *'unwelcome sex-based comments or actions and/or differential treatment because of her sex.'* She also must establish that these acts *'detrimentally affected her work environment.'*
- * The Tribunal felt that Brent's *'problem woman'* remark about Carrie's clothing did not amount to *'sex discrimination'* as Brent had worked on the Clothing committee and felt the wool clothing would be safer for the employees to wear. In regards to Brent's comment of Carrie being *'stupid'* they stated it also was not *'gender based'*.... and in fact other employees sometimes called each other *'stupid'* while playing cards.
- * The Tribunal next dealt with Neil's remark that Carrie was *'sucking up'* to her supervisor. They stated that although it made Carrie feel uncomfortable and embarrassed, it did not refer to her *'gender'* in any way and could have been directed at anyone who was talking to their supervisor. However, they stated that Neil's remark made at the safety meeting was clearly a *'gender-based'* insult. They felt it was *'sexist, offensive and inappropriate'* but added that since Neil had made no other *'gender-based'* comments toward Carrie it had no other *'adverse'* work related consequences.
- * The Tribunal indicated that although Gord had told Carrie to get off her *'fat a - s'* they could not conclude it was related to Carrie's *'gender.'*
- * They stated it was not directed at Carrie alone but also at a male co-worker who was sitting with her. In regards to Gord's comment inferring that she was having a *'sexual'* relationship with Arnie, the Tribunal felt that he would not have made such a comment to a male employee and that it was *'gender-based.'* They considered whether or not this one comment constituted *'sex discrimination.'* Since there was no evidence that Gord made any further comments that were *'sexual'* in nature to Carrie or that it had any *'adverse'* job consequences for her the Tribunal stated that this comment was therefore not in violation of the Human Rights Code.
- * However, the Tribunal also stated that although they had dismissed all the allegations against the individuals, they must consider whether the comments, taken together, suggested a *'gender-based poisoned work environment'* for which the company bore responsibility. They felt that even if Carrie overreacted due to her medication it did not excuse the various comments and treatment she had to endure.
- * While the Tribunal commended the company for the steps they took to investigate Carrie's informal and then formal complaint the workplace continued to be dominated by *'gender-based'* comments and *'intimidating'* actions that served to create a *'poisoned work environment'* for women who worked there. They said that while the company had all the appropriate policies in place if they were not followed, it did not absolve the company from its responsibility to provide a *'workplace free from discrimination.'*
- * The Tribunal concluded the company had failed to provide Carrie with a *'harassment free'* workplace and that the harassment she endured was based, at least in part, on her *'sex.'* They added that although her medical problems contributed to her reactions and stresses the *'gender-based'* harassment was also a factor. This was all that was necessary to establish a complaint of *'sexual discrimination.'* They subsequently ordered the company to pay Carrie 60% of her lost wages and \$5,000 for injury to her dignity, feelings and self-respect.

** *It is interesting to note that although several 'isolated' incidents of 'harassment or sex discrimination' reported by Carrie did not 'individually' constitute violations of the Human Rights Code when the incidents were considered 'together in their entirety' it was evident to the B.C. Human Rights Tribunal that the Company as a whole had violated the Code by failing to provide a 'healthy workplace environment free of sex discrimination.'* **



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** See Attachment **

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